

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

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**INMATE CALLING SERVICES PROVIDERS COALITION'S OPPOSITION TO
THE RBOC PAYPHONE COALITION'S PETITION FOR CLARIFICATION**

October 28, 1996

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**INMATE CALLING SERVICES PROVIDERS COALITION'S OPPOSITION TO
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The Inmate Calling Services Providers Coalition ("ICSP Coalition") hereby opposes the RBOC Payphone Coalition's ("RBOC Coalition" or "RBOCs") October 21, 1996 Petition for Clarification ("Petition") of the Commission's September 20, 1996 Report and Order, FCC 96-388, in the above-captioned proceeding (the "Order").

I. INTRODUCTION AND SUMMARY

In its Petition, the RBOC Coalition requests clarification that the RBOCs "are entitled to compensation for 0+ calls made on inmate phones¹." Petition at 4. The ICSP

¹ What the RBOCs refer to as "inmate payphones," the Coalition has always termed "inmate calling systems" to underscore that outward appearances aside, there is almost no similarity between the equipment used to provide inmate calling and general payphones. General payphones simply provide a gateway to the public network. Inmate calling systems, by contrast, provide sophisticated call processing, automated operator service, call recording and monitoring, and the extensive fraud controls required in the inmate environment.

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Coalition opposes the Petition for two reasons. First, the RBOCs over-reach in their request for relief. While they may be entitled to compensation for certain interlata calls made from their inmate calling systems, the RBOCs are not entitled to their requested compensation for local and intralata calls, which make up a large percentage of inmate calling. Second, the RBOCs note almost in passing that they find the Commission's decision not to establish a special per-call compensation element to ensure fair compensation for all inmate service providers "unobjectionable." The arguments that the RBOC Coalition makes, however, undercut this view and, in fact, lend support to the \$.90 per-call inmate services compensation element that the ICSP Coalition has demonstrated is necessary to provide fair compensation for all inmate service providers ("ISPs").

**II. THE RBOCS ARE ENTITLED TO THEIR REQUESTED
\$.35 PER-CALL COMPENSATION ONLY FOR CERTAIN
INTERLATA CALLS**

The RBOCs contend that they should receive the same per-call compensation for 0+ calls made from their inmate calling systems that the Commission has prescribed for dial-around calls from general payphones. Petition at 4. According to the RBOCs, they are entitled to such compensation under Paragraph 53 of the Order. The RBOCs, however, read paragraph 53 far too broadly.

Paragraph 53 provides that the RBOCs "may receive the per-call compensation established by this Order [for 0+ calls made from their payphones], so long as they do not otherwise receive compensation for the use of their payphones in originating [such] calls."

Order ¶ 53. It is clear that where the RBOCs already receive compensation for a given call, they are not entitled to any Commission-prescribed per-call compensation. Id.

Though the Petition does not make it clear, the RBOCs are currently compensated for many of the calls made from their inmate calling systems. For many confinement facilities, the majority of calls are local or intralata.² There is no question that the RBOCs receive compensation for those calls because they carry the traffic. Since 0+ calls are the only type of call that can be made from inmate calling systems, clearly some revenue is being generated by such calls. Either the RBOC inmate division is being credited by the RBOC with that revenue (after allocations of validation, billing and collection, and other costs) or the RBOC inmate division should be allocated some commission revenue for routing the calls to the RBOC's operator service division. But some of the revenue from the 0+ intralata and local calling must be allocated to the RBOC inmate division. No accounting artifice can or should be allowed to distort that the RBOCs are in exactly the same position with respect to these intralata and local calls as independent ISPs: they are excluded from compensation under the Order as it now stands because they are "commissionable" 0+ calls which they either carry and/or receive commissions for.

It is thus only with respect to interlata calls that the RBOCs are eligible for compensation; even then, however, it is only in the case of interlata calls originating from

² See Petition for Partial Reconsideration and Clarification of Inmate Services Providers Coalition, CC Docket 96-128, filed October 21, 1996 at 8.

inmate facilities under grandfathered contracts that the RBOCs may not be receiving compensation or contracts entered into while the RBOCs were precluded from choosing the interlata carrier. The RBOCs have been historically barred from carrying interlata calls as a result of the MFJ. Since 1988, the location provider (in this case the confinement facility) has been solely responsible for the selection of the presubscribed IXC for RBOC payphones; the RBOCs themselves were prohibited from any involvement in the selection.³ As a result, the RBOCs were not free to negotiate an agreement with the IXC that provided fair compensation.

Section 276(b)(1)(D) of the Communications Act of 1934, as amended, 47 U.S.C. § 276(b)(1)(D), however, directed the Commission to grant the RBOCs the right to negotiate with location providers for the presubscription of interlata carriers for their payphones, unless the Commission determined that such rights would be contrary to the public interest. In the Order, the Commission carried out the mandate of Section 276(b)(1)(D) and ruled that the RBOCs may participate in the selection of the presubscribed IXCs from their payphones. Order ¶ 238. As a result, the RBOCs, like independent ISPs, will be free to negotiate their contracts with the presubscribed IXC once their CEI plans are approved and there is generally no need for the Commission to prescribe the per-call compensation requested by the RBOCs. Order ¶ 53.

³ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Notice of Proposed Rulemaking, 11 FCC Rcd 6716, ¶ 69 (1996).

In the Order, the Commission grandfathered existing location contracts. Order ¶ 250. Though the RBOCs do not make this clear, it is only with respect to interlata calls originating from inmate calling systems under those grandfathered contracts (or other contracts entered into between inmate facilities while the BOCs were precluded from choosing the interlata carrier) that the RBOCs may not be receiving compensation. And, it is only with respect to these calls that the RBOCs can claim compensation under Paragraph 53 of the Order. The RBOCs are not entitled to their requested per-call compensation on other calls made from their inmate calling systems, unless they can show affirmatively that, for some reason, they are not receiving compensation for a particular call.⁴

The RBOCs are simply wrong that the "flat rate of \$45.85 applicable to all payphones, including RBOC inmate payphones is an acceptable (if imprecise) interim measure of the compensation" that they contend they are owed. The \$45.85 applies to dial-around compensation. The RBOCs, however, seek compensation for 0+ calls. They are entitled to \$.35 per-call compensation only for any interlata call where a grandfathered contract prevents the RBOC from negotiating compensation with the IXC.

Moreover, even with regard to those compensable interlata calls, the Order explicitly provides that the RBOCs are entitled to nothing unless and until they "reclassify their payphones and terminate all subsidies, pursuant to Section 276(b)(1)(B)." Order at

⁴ It is difficult to imagine any circumstances under which an RBOC would not receive fair compensation for a local or interlata call that it carries.

53. There is nothing in the record that suggests that this process has started, much less has been completed. The RBOCs suggest that "the Commission began the process of reclassifying/reallocating inmate payphone assets and eliminating subsidies for these payphones long ago," in its Declaratory Ruling, 11 FCC Rcd 7362 (1996), regarding the regulatory status of BOC inmate calling systems. That ruling, however, simply clarified that inmate calling systems are CPE under the Commission's existing CPE rules. It did not fulfill the Commission's obligation to comply with its statutory duty under Section 276 to ensure that the BOCs cannot "subsidize" or "prefer or discriminate in favor of" their own inmate services. 47 U.S.C. § 276(a). The RBOCs must demonstrate that they have met all of the reclassification conditions established by the Order before they are eligible to receive any per-call compensation for 0+ calls made from their inmate calling systems. As the Coalition made clear in its Petition for Partial Reconsideration and Clarification, those requirements include, but are not limited to, (1) filing nondiscriminatory tariffs for their inmate calling services, (2) obtaining Commission approval of a CEI plan covering those services, and (3) removing from their intrastate rates any charges that recover the costs of the inmate calling systems so as to eliminate any intrastate subsidies (see Order at ¶ 186).

**III. THE RBOCS' PETITION UNDERSCORES THE NEED
FOR THE COMMISSION TO PRESCRIBE A \$.90
PER-CALL INMATE SYSTEM COMPENSATION
ELEMENT**

The ICSP Coalition has repeatedly shown that inmate calling systems are far more expensive to operate than general payphones. Now, the RBOCs acknowledge this as

well. According to the RBOCs' Petition, "Inmate payphones are the most expensive payphones the RBOCs operate, as RBOCs must provide advanced screening and other security functions to prevent inmates from placing harassing, abusive or threatening calls to their victims, to law enforcement officers, or to potential witnesses." Petition at 4.

Historically, the RBOCs have not felt the bite of the higher cost of providing inmate calling services because, as the RBOCs now acknowledge openly, having argued for years to the contrary,⁵ "those expenses have been offset by subsidies." Petition at 4. Now that those subsidies are being eliminated, the RBOCs are suddenly concerned that "[u]nless the Commission allows [them] to make up those losses through compensation -- as Congress intended -- RBOCs will suffer huge losses on their most costly payphones." Petition at 4.

Accordingly to the RBOCs, the same \$.35 compensation element that the Commission established for dial-around calls from general payphones is also an appropriate amount of compensation for 0+ calls made from their inmate calling systems. This is only the case, however, because the RBOCs' request for compensation must be limited to interlata calls, originating from facilities with grandfathered contracts, as explained above.

⁵ See, e.g., Reply Comments of Southwestern Bell Telephone Company in the inmate CPE Declaratory Ruling proceeding, filed March 23, 1993 ("[Southwestern Bell's] ratepayers do not subsidize its providing monitoring and recording equipment."); Reply Comments of Pacific Bell and Nevada Bell, filed March 26, 1993; ("[T]he Pacific Companies do not subsidize their inmate public telephones with revenues from any of their other regulated services.") Having told the Commission for years that no subsidies existed when they perceived it to be in their best interests, the RBOCs should now be estopped from claiming otherwise.

With respect to these calls, the RBOCs bear only a small portion of the costs of the call, and it is for this reason that the \$.35 cents per call may be adequate compensation for the RBOCs.⁶ But for other calls,⁷ and for independent ISPs, the requested \$.35 compensation is not adequate to provide fair compensation.

A review of the cost analysis attached as Exhibit 2 to the ICSP Coalition's Petition for Partial Reconsideration and Clarification⁸ makes clear why it is that the RBOCs are adequately compensated for interlata inmate calls by a \$.35 per-call charge while independent ISPs are not. The cost analysis shows the average costs for a local inmate call borne by the independent ISPs operating in North Carolina. Those costs include the monthly line charge (\$.05), measured service (\$.16), billing and collection fee (\$.22), validation (\$.21), site owner commission (\$.24), bad debt (\$.19), maintenance and repairs (\$.04), equipment and amortization (\$.10), overhead (\$.18), and taxes (\$.03) for a total of \$1.42 in costs for every local call. Of those costs, all but the measured service rate and the taxes (which varies with the measured service rate) are fixed and do not vary from one category of call to another. Thus, setting aside the measured service rate and the taxes, the independent ISPs costs would be \$1.23 for an interlata call.

⁶ Of course, the IXCs who carry these interlata calls will charge the \$.90 "inmate element" that is in their interstate and most intrastate interlata tariffs, as explained in the ICSP Coalition's Petition for Partial Reconsideration and Clarification.

⁷ As explained above, these other intralata and local calls are carried by the RBOCs as 0+ calls and the RBOCs generate the revenue from them which, under the Order, is supposed to include the ISP compensation.

⁸ A copy of that exhibit is also attached hereto as Exhibit 1.

By comparison, an RBOC has only \$.37 -- or \$.86 less than the independent ISPs -- in costs for an interlata call it does not carry. Only charges associated with the monthly line charge,⁹ equipment maintenance and repairs, equipment and amortization, and overhead, are attributable to these calls by the RBOC. All other cost elements -- including billing and collection, validation, site owner commission and bad debt -- are borne by the IXC carrying the traffic. The RBOCs are willing to accept \$.35 in compensation for interstate inmate calls only because they are not faced with the lion's share of the costs for interlata calls borne by independent inmate service providers. Once the RBOCs are able to carry the interlata traffic, it is likely that they too will find \$.35 too low to provide fair compensation for the unique costs of providing inmate calling services.

The RBOC Coalition's acknowledgment that, without subsidies, the RBOCs inmate operations will face tremendous losses only serves to underscore the ICSP Coalition's argument that the Commission must address the higher costs associated with inmate calling through the \$.90 per-call inmate system compensation charge that the Coalition has demonstrated is necessary to provide fair compensation for inmate calls.

⁹ While some parties have argued that no portion of the recurring monthly line charge is attributable to toll, and particularly interlata toll, the ICSP Coalition believes each call should bear its proportionate share of flat monthly recurring costs.

NORTH CAROLINA - INMATE COLLECT CALLS
LOCAL COLLECT CALLS COST EXHIBIT - \$.25 LOCAL CALL

\$.25 LEC LOCAL CALL RATE (CAPPED)

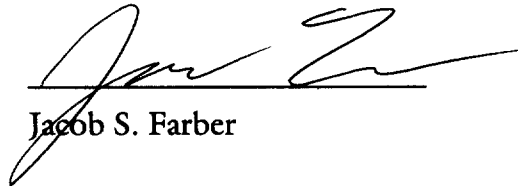
\$.70 LEC COLLECT SURCHARGE (CAPPED)

	BELLSOUTH LOCAL	
REVENUE	<u>\$0.950</u>	
PHONE COMPANY CHARGES:		
MONTHLY LINE CHARGE	\$0.053	1
MEASURED SERVICE	\$0.160	2
BILLING AND COLLECTION FEES	\$0.221	3
VALIDATION	\$0.205	4
OPERATING COSTS:		
SITE OWNER COMMISSION (25%)	\$0.238	
BAD DEBT - 20%	\$0.190	
MAINTENANCE & REPAIRS	\$0.042	5
EQUIPMENT AMORTIZATION	\$0.101	6
OVERHEAD	\$0.175	7
TAXES:		
NC FRANCHISE TAX - 3.22%	\$0.031	
NC SALES TAX - 3.00%	-	8
NC SALES TAX - 6.50%	-	
TOTAL COSTS	\$1.415	
PROFIT/(LOSS) PER CALL BEFORE TAXES	(\$0.465)	

- 1) Based on \$31 per month line charge divided by an average of 585 calls per month per line.
- 2) Measured service based on an 8 minute call with 50%/50% peak/off-peak mix and 1 Answered/Not-Accepted call per Answered/Accepted call.
- 3) BellSouth billing and collection fees of \$0.36 for bill rendering, \$.06 per message with 7 messages per bill and a clearinghouse fee of \$.11 per message.
- 4) Three validation queries at \$.0683 each for each billable call (1 No Answer/Busy, 1 Answered/Not-Accepted, 1 Answered/Accepted).
- 5) Maintenance and Repairs includes: 1 Technician @ \$10.50/hr with benefits and a 44-hour week servicing 200 phones, 1 vehicle and all parts - \$24.75 per month.
- 6) \$3,545 per line for equipment amortized over 60 months and an average of 585 calls per line per month.
- 7) Based on \$102.38 per month with 585 calls per month per line.
- 8) NC Sales Tax added to the price of the call.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of October, 1996, the foregoing INMATE
CALLING SERVICES PROVIDERS COALITION'S OPPOSITION TO THE RBOC
PAYPHONE COALITION'S PETITION FOR CLARIFICATION was sent via first class
mail, postage prepaid to Michael K. Kellogg of Kellogg, Huber, Hansen, Todd & Evans,
1301 K Street, N.W., Suite 1000 West, Washington, DC 20005.



Jacob S. Farber